

HOUSE BILL No. 1409

DIGEST OF INTRODUCED BILL

Citations Affected: IC 28-1-11-3.1; IC 28-6.1-6-6; IC 28-7-1-9; IC 28-8-5-17.

Synopsis: Fees on child support checks. Prohibits a financial institution from imposing a check cashing fee on a child support check or other support check issued by the clerk of the circuit court.

Effective: July 1, 2003.

**Ayres, Lawson L, Richardson,
Becker, Budak**

January 14, 2003, read first time and referred to Committee on Financial Institutions.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1409

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 28-1-11-3.1, AS AMENDED BY P.L.215-1999,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 3.1. (a) Any bank or trust company shall have the
4 power to discount, negotiate, sell and guarantee promissory notes,
5 bonds, drafts, acceptances, bills of exchange, and other evidences of
6 debt; to buy and sell, exchange, coin and bullion; to loan money; to
7 borrow money and to issue its notes, bonds, or debentures to evidence
8 any such borrowing and to mortgage, pledge, or hypothecate any of its
9 assets to secure the repayment thereof; to receive savings deposits and
10 deposits of money subject to check, and deposits of securities or other
11 personal property from any person or corporation, upon such terms as
12 may be agreed upon by the parties; to contract for and receive on loans
13 and discounts the highest rate of interest allowed by the laws of this
14 state to be contracted for and received by individuals; to accept, for
15 payment at a future date, drafts drawn upon it by its customers and to
16 issue letters of credit authorizing the holders thereof to draw drafts
17 upon it or its correspondents at sight or on time, however, the letter of

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1 credit must state a specific expiration date; and to exercise all the
 2 powers incidental and proper or which may be necessary and usual in
 3 carrying on a general banking business, but it shall have no right to
 4 issue bills to circulate as money.

5 (b) Subject to such regulations as the department finds to be
 6 necessary and proper, any bank or trust company shall have the
 7 following powers:

8 (1) To make such loans and advances of credit and purchases of
 9 obligations representing loans and advances of credit as are
 10 eligible for insurance by the federal housing administrator, and to
 11 obtain such insurance.

12 (2) To make such loans secured by mortgages on real property or
 13 leasehold, as the federal housing administrator insures or makes
 14 a commitment to insure, and to obtain such insurance.

15 (3) To purchase, invest in, and dispose of notes or bonds secured
 16 by mortgage or trust deed insured by the federal housing
 17 administrator or debentures issued by the federal housing
 18 administrator, or bonds or other securities issued by national
 19 mortgage associations.

20 (4) To extend credit to any state agency, with the approval of the
 21 department, notwithstanding any other provisions or limitations
 22 of IC 28-1. No law of this state prescribing the nature, amount, or
 23 form of security or requiring security upon which loans or
 24 advances of credit may be made, or prescribing or limiting
 25 interest rates upon loans or advances of credit, or prescribing or
 26 limiting the period for which loans or advances of credit may be
 27 made, shall be deemed to apply to loans, advances of credit, or
 28 purchases made pursuant to subdivisions (1), (2), and (3) and this
 29 subdivision.

30 (5) To purchase, take, hold, and dispose of notes, and mortgages
 31 securing such notes, made to any joint stock land bank heretofore
 32 incorporated, in any case in which not less than ninety-nine
 33 percent (99%) of the stock of said joint stock land bank is owned
 34 by the bank or trust company at the time such notes or mortgages
 35 be acquired by the bank or trust company; and upon dissolution
 36 of any such joint stock land bank, or at any stage in the process of
 37 such dissolution, any bank or trust company then owning not less
 38 than ninety-nine percent (99%) of the stock of such joint stock
 39 land bank may take, hold, and dispose of any notes, mortgages, or
 40 other assets of such joint stock land bank of whatsoever nature,
 41 including real estate, wheresoever situated, which such joint stock
 42 land bank shall assign, transfer, convey, or otherwise make over

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1 to such bank or trust company by way of final or partial
2 distribution of its assets to its stockholders upon such dissolution
3 or in connection with the process of such dissolution. No law of
4 this state prescribing the nature, amount, location, or form of
5 security, or requiring security upon which loans or advances of
6 credit may be made, or prescribing or limiting interest rates upon
7 loans or advances of credit, or prescribing or limiting the period
8 for which loan or advances of credit may be made, or prescribing
9 any ratio between the amount of any loan and the appraised value
10 of the security for such loan, or requiring periodical reductions of
11 the principal of any loan, shall be deemed to apply to loans, notes,
12 mortgages, real estate, or other assets mentioned in this
13 subdivision.

14 (6) To adopt stock purchase programs for employees and to grant
15 options to purchase, and to issue and sell, shares of its capital
16 stock to its employees, or to a trustee on their behalf (which may
17 be the bank or trust company issuing such capital stock), without
18 first offering the same to its shareholders, for such consideration,
19 not less than par value, and upon such terms and conditions as
20 shall be approved by its board of directors and by the holders of
21 a majority of its shares entitled to vote with respect thereto, and
22 by the department. In the absence of actual fraud in the
23 transaction, the judgment of the directors as to the consideration
24 for the issuances of such options and the sufficiency thereof shall
25 be conclusive. Any bank or trust company exercising the powers
26 granted in this subsection may, to the extent approved by the
27 department, have authorized and unissued stock required to fulfill
28 any stock option or other arrangement authorized herein.

29 (7) Subject to such restrictions as the department may impose, to
30 become the owner or lessor of personal or real property acquired
31 upon the request and for the use of a customer and to incur such
32 additional obligations as may be incident to becoming an owner
33 or lessor of such property.

34 (8) To purchase or construct buildings and hold legal title thereto
35 to be leased to municipal corporations or other public authorities,
36 for public purposes, having resources sufficient to make payment
37 of all rentals as they become due. Each lease agreement shall
38 provide that upon expiration, the lessee will become the owner of
39 the building.

40 (8.1) Subject to the prior written approval of the department, and
41 notwithstanding section 5 of this chapter, to purchase, hold, and
42 convey real estate which is:

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(A) improved or to be improved by a single, freestanding building; and

(B) to be used, in part, as a branch of that bank or trust company and, in part, as rental property for one (1) lessee.

Unless a written extension of time is given by the department, the bank or trust company shall open its branch within two (2) years from the acquisition date of the real estate. If the bank or trust company does not open a branch on the real estate in that time period or if the bank or trust company removes its branch from the real estate, the bank or trust company shall divest itself of all interest in the real estate within five (5) years from the acquisition date of the real estate, if a branch was not opened, or five (5) years from the removal date of the branch office. Except with the written approval of the department, the sum invested in real estate and buildings used for the convenient transaction of its business as provided in this subdivision shall not exceed fifty percent (50%) of the sound capital of that bank or trust company as provided in section 5 of this chapter.

(9) To invest in community development corporations and projects of a predominantly civic, community, or public nature, including equity investments in corporations or limited liability companies organized for such purposes. Investments by a bank or trust company under this subdivision may not exceed:

(A) in any one (1) project, two percent (2%); and

(B) in the aggregate, five percent (5%);

of the capital and surplus of the bank or trust company, unless the director makes the determination set forth in subsection (c). As used in this subdivision and in subsection (c), "capital and surplus" has the meaning set forth in IC 28-1-13-1.1.

(10) Subject to section 3.2 of this chapter, to exercise the rights and privileges (as defined in section 3.2(a) of this chapter) that are or may be granted to national banks domiciled in Indiana.

(c) Investments by a bank or trust company under subsection (b)(10) may exceed the limit set forth in subsection (b)(10)(B) if the director determines that:

(1) the aggregate investments by the bank or trust company under subsection (b)(10) in excess of five percent (5%) of the capital and surplus of the bank or trust company will not pose a significant risk to the affected deposit insurance fund; and

(2) the bank or trust company is adequately capitalized.

However, in no case shall the aggregate investments by a bank or trust company under subsection (b)(10) exceed ten percent (10%) of the

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capital and surplus of the bank or trust company.

(d) A bank or trust company shall not make any investment under subsection (b)(10) if the investment would expose the bank or trust company to unlimited liability.

(e) Any rule made and promulgated under and pursuant to this section may apply to one (1) or more banks or trust companies or to one (1) or more localities in the state as the department, in its discretion, may determine.

(f) A bank or trust company may not assess a check cashing fee if the check is issued by the clerk of a circuit court under IC 31-16-9-1. A provision in a contract or other agreement that imposes a check cashing fee is void as it relates to a check described in this subsection.

SECTION 2. IC 28-6.1-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) A savings bank may receive deposits of securities or other personal property from any person or corporation, upon terms agreed upon by the parties.

(b) A savings bank may not assess a check cashing fee if the check is issued by the clerk of a circuit court under IC 31-16-9-1. A provision in a contract or other agreement that imposes a check cashing fee is void as it relates to a check described in this subsection.

SECTION 3. IC 28-7-1-9, AS AMENDED BY P.L.134-2001, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) A credit union has the following powers:

(1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

(2) To make loans to members or other credit unions. A loan to another credit union may not exceed twenty percent (20%) of the paid-in capital and surplus of the credit union making the loan.

(3) To make loans to officers, directors, or committee members, but only if:

(A) the loan complies with all requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

(B) upon the making of the loan, the aggregate amount of loans outstanding under this subdivision will not exceed twenty percent (20%) of the unimpaired capital and surplus of the credit union;

(C) the loan is approved by the credit committee or loan officer; and

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- 1 (D) the borrower takes no part in the consideration of or vote
 2 on the application.
 3 (4) To invest in any of the following:
 4 (A) Bonds, notes, or certificates that are the direct or indirect
 5 obligations of the United States, or of the state, or the direct
 6 obligations of a county, township, city, town, or other taxing
 7 district or municipality or instrumentality of Indiana and that
 8 are not in default.
 9 (B) Bonds or debentures issued by the Federal Home Loan
 10 Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners'
 11 Loan Act (12 U.S.C. 1461 through 1468).
 12 (C) Interest-bearing obligations of the FSLIC Resolution Fund
 13 and obligations of national mortgage associations issued under
 14 the authority of the National Housing Act.
 15 (D) Mortgages on real estate situated in Indiana which are
 16 fully insured under Title 2 of the National Housing Act (12
 17 U.S.C. 1707 through 1715z).
 18 (E) Obligations issued by farm credit banks and banks for
 19 cooperatives under the Farm Credit Act of 1971 (12 U.S.C.
 20 2001 through 2279aa-14).
 21 (F) In savings and loan associations, other credit unions that
 22 are insured under IC 28-7-1-31.5 and certificates of
 23 indebtedness or investment of an industrial loan and
 24 investment company if the association or company is federally
 25 insured. Not more than twenty percent (20%) of the assets of
 26 a credit union may be invested in the shares or certificates of
 27 an association or company; nor more than forty percent (40%)
 28 in all such associations and companies.
 29 (G) Corporate credit unions.
 30 (H) Federal funds or similar types of daily funds transactions
 31 with other financial institutions.
 32 (I) Mutual funds created and controlled by credit unions, credit
 33 union associations, or their subsidiaries. Mutual funds referred
 34 to in this clause may invest only in instruments that are
 35 approved for credit union purchase under this chapter.
 36 (J) Shares, stocks, or obligations of any credit union service
 37 organization (as defined in Section 712 of the Rules and
 38 Regulations of the National Credit Union Administration) with
 39 the approval of the department. Not more than five percent
 40 (5%) of the total paid in and unimpaired capital of the credit
 41 union may be invested under this clause.
 42 (5) To deposit its funds into:

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- 1 (A) depository institutions that are federally insured; or
- 2 (B) state chartered credit unions that are privately insured by
- 3 an insurer approved by the department.
- 4 (6) To purchase, hold, own, or convey real estate as may be
- 5 conveyed to the credit union in satisfaction of debts previously
- 6 contracted or in exchange for real estate conveyed to the credit
- 7 union.
- 8 (7) To own, hold, or convey real estate as may be purchased by
- 9 the credit union upon judgment in its favor or decrees of
- 10 foreclosure upon mortgages.
- 11 (8) To issue shares of stock and upon the terms, conditions,
- 12 limitations, and restrictions and with the relative rights as may be
- 13 stated in the bylaws of the credit union, but no stock may have
- 14 preference or priority over the other to share in the assets of the
- 15 credit union upon liquidation or dissolution or for the payment of
- 16 dividends except as to the amount of the dividends and the time
- 17 for the payment of the dividends as provided in the bylaws.
- 18 (9) To charge the member's share account for the actual cost of
- 19 necessary locator service when the member has failed to keep the
- 20 credit union informed about the member's current address. The
- 21 charge shall be made only for amounts paid to a person or concern
- 22 normally engaged in providing such service, and shall be made
- 23 against the account or accounts of any one (1) member not more
- 24 than once in any twelve (12) month period.
- 25 (10) To transfer to an accounts payable, a dormant account, or a
- 26 special account share accounts which have been inactive, except
- 27 for dividend credits, for a period of two (2) years. The credit
- 28 union shall not consider the payment of dividends on the
- 29 transferred account.
- 30 (11) To invest in fixed assets with the funds of the credit union.
- 31 An investment in fixed assets in excess of five percent (5%) of its
- 32 assets is subject to the approval of the department.
- 33 (12) To establish branch offices, upon approval of the department,
- 34 provided that all books of account shall be maintained at the
- 35 principal office.
- 36 (13) To pay an interest refund on loans proportionate to the
- 37 interest paid during the dividend period by borrowers who are
- 38 members at the end of the dividend period.
- 39 (14) To purchase life savings and loan protection insurance for
- 40 the benefit of the credit union and its members, if:
- 41 (A) the coverage is placed with an insurance company licensed
- 42 to do business in Indiana; and

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- 1 (B) no officer, director, or employee of the credit union
 2 personally benefits, directly or indirectly, from the sale or
 3 purchase of the coverage.
- 4 (15) To sell and cash negotiable checks, travelers checks, and
 5 money orders for members.
- 6 (16) To purchase members' notes from any liquidating credit
 7 union, with written approval from the department, at prices agreed
 8 upon by the boards of directors of both the liquidating and the
 9 purchasing credit unions. However, the aggregate of the unpaid
 10 balances of all notes of liquidating credit unions purchased by any
 11 one (1) credit union shall not exceed ten percent (10%) of its
 12 unimpaired capital and surplus unless special written
 13 authorization has been granted by the department.
- 14 (17) To exercise such incidental powers necessary or requisite to
 15 enable it to carry on effectively the business for which it is
 16 incorporated.
- 17 (18) To act as a custodian or trustee of any trust created or
 18 organized in the United States and forming part of a stock bonus,
 19 pension, or profit sharing plan which qualifies or qualified for
 20 specific tax treatment under Section 408(a) or Section 401(d) of
 21 the Internal Revenue Code, if the funds of the trust are invested
 22 only in share accounts or insured certificates of the credit union.
- 23 (19) To issue shares of its capital stock or insured certificates to
 24 a trustee or custodian of a pension plan, profit sharing plan, or
 25 stock bonus plan which qualifies for specific tax treatment under
 26 Sections 401(d) or 408(a) of the Internal Revenue Code.
- 27 (20) A credit union may exercise any rights and privileges that
 28 are:
- 29 (A) granted to federal credit unions; but
 30 (B) not authorized for credit unions under the Indiana Code
 31 (except for this section) or any rule adopted under the Indiana
 32 Code;
- 33 if the credit union complies with section 9.2 of this chapter.
- 34 (21) To sell, pledge, or discount any of its assets, to purchase all
 35 or part of the assets of another credit union, and to assume the
 36 liabilities of the selling credit union. However, a credit union may
 37 not pledge any of its assets as security for the safekeeping and
 38 prompt payment of any money deposited, except that a credit
 39 union may, for the safekeeping and prompt payment of money
 40 deposited, give security as authorized by federal law.
- 41 (22) To act as a fiscal agent of the United States and to receive
 42 deposits from nonmember units of the federal, state, or county

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governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed ten percent (10%) of the total assets of that credit union, excluding those public funds.

(23) To join the National Credit Union Administration Central Liquidity Facility.

(24) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(25) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

(26) To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

(27) Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional

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obligations as may be incident to becoming an owner or lessor of such property.

(b) A credit union may not assess a check cashing fee if the check is issued by the clerk of a circuit court under IC 31-16-9-1. A provision in a contract or other agreement that imposes a check cashing fee is void as it relates to a check described in this subsection.

SECTION 4. IC 28-8-5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. **(a)** Except as otherwise provided in this chapter, a licensee may not charge check cashing fees in excess of the greater of five dollars (\$5) or ten percent (10%) of the face amount of a check. Except as provided in this chapter, a licensee or the licensee's agent may not accept multiple checks from a:

- (1) person;
- (2) person's spouse; or
- (3) person's agent;

drawn on the person's account with the intent that the licensee may collect multiple or increased fees for cashing the checks.

(b) A licensee may not assess a check cashing fee if the check is issued by the clerk of a circuit court under IC 31-16-9-1. A provision in a contract or other agreement that imposes a check cashing fee is void as it relates to a check described in this subsection.

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